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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1946

No. 62

CHARLES B. MORRIS, *Petitioner,*

vs.

PAUL F. JONES, Director of Insurance of the State of Illinois, *Appellee.*

BRIEF OF THE STATE OF CALIFORNIA AS AMICUS CURIAE IN SUPPORT OF PETITION OF N. P. PARKINSON DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS FOR A REHEARING.

FRED N. HOWSER,
Attorney General of the State of California,

T. A. WESTPHAL, JR.,
Deputy Attorney General of the State of California,
600 State Building, San Francisco 2, California,

Attorneys for State of California as Amicus Curiae.

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STATEMENT.

The Attorney General of California respectfully submits this brief as amicus curiae in support of the petition of N. P. Parkinson, Director of Insurance of the State of Illinois for a rehearing because California is deeply and adversely affected by the decision of this Court herein rendered on January 20, 1947.

Because of time impediments and since we understand adequate petitions are being filed by both representatives of the State of Illinois and of the State of New York, as amicus curiae, setting forth pertinent material, we do not propose to undertake to do other than indicate the effect of the decision on California statutes and practices. It is hoped that this brief presentation will be of assistance to the Court in demonstrating the widespread effect and some undesirable results of its ruling.

CALIFORNIA INSURANCE CODE MADE INEFFECTIVE BY THE DECISION AND RESULTING DISCRIMINATION AGAINST CALIFORNIA RESIDENTS.

California Insurance Code section 1020(c) relating to a Court having jurisdiction over liquidation of an insurance company provides:

> "* * * the court shall issue such other injunctions or orders as may be deemed necessary to prevent any or all of the following occurrences:
> * * * * * * * *
> (c) The institution or prosecution of any actions or proceedings."

It is apparent that under the decision a resident of a foreign state, despite the injunction referred to in the section, may prosecute an action in a foreign state against an insurance company in liquidation in California. The section would forbid such action in California. Therefore, California residents would be discriminated against.

California Insurance Code section 1020(d) authorizes injunctions against:

> "(d) The obtaining of preferences, judgments, attachments, or other liens against such person or its assets."

Again the decision would nullify the section as it would give life to foreign judgments but the section would be binding on California judgments and residents, again causing discrimination against California.

California Insurance Code sections 1021 to 1024, inclusive,* provide for the time and method of filing a

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*Section 1021. "Upon the making of an order to liquidate the business of such person, the commissioner shall cause to be published notice to its policyholders, creditors, shareholders, and all other persons interested in its assets. Such notice shall require claimants to file their claims with the commissioner, together with proper proofs thereof, within six months after the date of first publication of such notice, in the manner specified in this article."

Section 1022. "Such notice shall be published in a newspaper of general circulation, published in the county in which the proceeding is pending, not less than once a week for four successive weeks. A copy of the notice, accompanied by an affidavit of due publication, including a statement of the date of first publication, shall be filed with the clerk of the court."

Section 1023. "A claim must set forth, under oath, on the form prescribed by the commissioner:

(a) The particulars thereof, and the consideration therefor.

(b) Whether said claim is secured or unsecured, and, if secured, the nature and amount of such security.

(c) The payments, if any, made thereon.

(d) That the sum claimed is justly owing from such person to the claimant.

(e) That there is no offset to the claim.

(f) Such other data or supporting documents as the commissioner requires."

Section 1024. "Unless such claim is filed in the manner and within the time provided in section 1021, it shall not be entitled to filing or allowance, and no action may be maintained thereon. In the liquidation, pursuant to the provisions of this article, of any domestic insurer which has issued policies insuring the lives of persons, the commissioner shall, within thirty days after the

claim upon insurance companies in liquidation. Under the decision it would appear that a claim filed on the basis of a judgment obtained after the entry of the order of liquidation in a foreign state would have to be allowed after the time limit set up in the California code, thus again discriminating against California residents and in favor of residents of foreign states.

California Insurance Code section 1058 provides as follows:

> "In any proceeding pending under the provisions of this article, the court in which such proceeding is pending shall have jurisdiction to hear and determine, in such proceeding, all actions or proceedings then pending or thereafter instituted by or against the person affected by a proceeding under this article."

The decision would appear to avoid this section entirely with respect to residents in foreign states who choose to litigate in such states. This section actually provides a specific remedy in the liquidation court for all claimants, regardless of residence, on an equal basis.

It is apparent from the provisions of the above sections that they are intended to provide for liquidation of insurance companies in a manner which affords

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last day set for the filing of claims, make a list of the persons who have not filed proofs of claim with him and to whom, according to the books of said insufer, there are amounts owing under such policies, and he shall set opposite the name of each person the amount so owing to such person. Each person whose name shall appear upon said list shall be deemed to have duly filed, prior to the last day set for the filing of claims, a claim for the amount set opposite his name on said list."

equal treatment for all, regardless of residence of any particular claimants. This meritorious purpose is voided by the decision of this Court and in fact places foreign claimants in an advantageous position over those residing in California.

PRACTICAL CONSIDERATIONS.

In almost every instance when the California Insurance Commissioner has obtained an order to liquidate an insurance company it has had extensive business in foreign states. The business of such companies has always been found to be somewhat chaotic. The Commissioner is charged with the handling of a business with which he is necessarily wholly unfamiliar. It often has happened that when such orders are made actions are brought in California to discharge the liquidator upon various grounds such as that there was no cause for his appointment. The State may not have sufficint funds to engage in widespread litigation or it has happened that company funds are tied up by writs of attachment or otherwise. This condition is often naturally forced upon a liquidator, resulting in his not being in a position to immediately engage in liquidation in various sections of the country. It is apparent, therefore, that due to these difficulties adequate defense of litigation in foreign states is impossible and, indeed, entry of default judgments are likely if the decision of this Court is to be deemed binding upon the liquidator.

One particular proceeding in California in the past provides examples of the chaos and inequity which would result from the decision. In that case thousands of non-cancelable income policies were terminated by the order of liquidation and the holders of those policies suffered damages. The question of the measure of damage was a novel one. Differences of opinion with respect thereto ranged from the fact that there was no damage suffered since the individual could not know that he would be disabled in the future, to the fact that the policy was entitled to the return of all of his premiums and that he was entitled to the amount in excess of his premium which he would have to pay to get a similar policy, even though such similar policies were not available. In that case the company had policy-holders in practically every state. If this company had been liquidated in each of the foreign states there doubtless would have been a variety of decisions rendered covering the whole range of contentions made.

Under the decision rendered by this Court it would appear that the judgment would have been binding upon the liquidator with the result that claimants in identical positions would have received widely different remedies.

Such a result is contrary to the basic purpose of liquidation proceedings, which purpose is to provide for orderly determination of claims and the ratable distribution of available funds to creditors on an equitable basis.

The liquidation proceeding last referred to further illustrates the fact that under the decision it would be necessary, simultaneously and in a multitude of complex law suits involving the same question, to have appeared in various foreign states. Such appearances on the part of the liquidator would have been impossible, resulting in untold inequities to claimants.

The only protection the California liquidator would have against the effect of the decision of this Court would be to take advantage of the provisions of section 1017 of the California Insurance Code* and dissolve the corporation concurrently with the order of liquidation. This would be a very undesirable procedure for the reason that dissolution is not always advisable, for it often happens that after an examination of the affairs of the company full liquidation can be avoided to the benefit of the claimants. (Cf. *Neblett v. Carpenter,* 305 U. S. 297, 305.)

Again, if the liquidator is required to defend actions in various parts of the United States it would be apparent that the expense would be tremendous. In fact, the expenditures would be such that it is conceivable that a considerable portion of the assets of the company would be wasted in defending litigation. This waste is one which necessarily will be borne by creditors already in a position to lose by reason of the liquidation.

*Section 1017. "In his application for an order for the liquidation of a domestic corporation, or at any time thereafter, the commissioner may apply for, and the court shall make, an order dissolving such corporation."

CONCLUSION.

It is hoped that the above will give to the Court some little idea of the tremendous impact of this decision upon the laws of California and those similarly situated. If the discrimination and the chaos it is reasonable to foresee can be avoided, it is sincerely hoped that this honorable Court will find a way to remedy the situation. On the legal aspects we respectfully refer this Court to the briefs of counsel for the parties to the action.

Dated, San Francisco, California,
February 17, 1947.

Respectfully submitted,

FRED N. HOWSER,
Attorney General of the State of California,
T. A. WESTPHAL, JR.,
Deputy Attorney General of the State of California,
Attorneys for State of California as Amicus Curiae.